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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/483,039 01/18/00 TOTH

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IM52/0214

EXAMINER

MAI, H

ART UNIT

PAPER NUMBER

1761

DATE MAILED:

02/14/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/483,039

Applicant(s)

TOTH ET AL.

Examiner

Hao T Mai

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) 1-42 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claims ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 18) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-42 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "substantially" is a relative term which renders the claim indefinite. The term "substantially" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 1-5, 16-17, 19-23, 34-35, 38 – 39, and 42 are rejected under 35 U.S.C. 102(e) as being anticipated by Privert(5,922,376). Privert teaches a snack food container comprising a side wall (40) forming an upper opening, a bottom wall (13) connected to the side wall opposite the upper opening; and a flange(28) body extending downwardly from the bottom wall(44), the flange body defining an inner surface and an outer

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surface, the inner surface being configured for selective attachment to a beverage container(figs. 2 &4) ; wherein the snack food container defines an internal storage region for containing a snack food product(fig. 2), the side wall, the bottom wall and the flange body are integrally formed, a retaining means, and a protective film secured across the upper opening(fig. 1).

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-5, 7-11, 16, 20-23, 25-29, 34, and 38-39 are rejected under 35

U.S.C. 102(b) as being anticipated by Paulin(5,085,330), Cadigan(1,064,442). Paulin teaches a snack food container comprising a side wall (38) forming an upper opening, a bottom wall (30)connected to the side wall opposite the upper opening; and a flange(28) body extending downwardly from the bottom wall(30), the flange body defining an inner surface and an outer surface, the inner surface being configured for selective attachment to a beverage container(figs. 2-3). ; wherein the snack food container defines an internal storage region for containing a snack food product(fig. 3).

Cadigan teaches a snack food container comprising a side wall (a) forming an upper opening, a bottom wall(c2) connected to the side wall opposite the upper opening; and a flange(c) body extending downwardly from the bottom wall, the flange body defining an inner surface and an outer surface, the inner surface being configured for selective attachment to a beverage container(fig.) ; wherein the snack food container defines an internal storage region for containing a snack food product(fig.).

Regarding claims 2, and 20, Paulin and Cadigan teach the flange body is sized in accordance with to top portion of a beverage(Paulin fig. 3, Cadigan fig. 1)

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Regarding claims 3, 21, Paulin and Cadigan teach the container is cylindrical (Paulin fig. 3, Cadigan fig. 1)

Regarding claims 4, 22, and 39 Paulin and Cadigan teach the inner surface is substantially annular(Paulin fig. 3, Cadigan fig. 1)

Regarding claims 5, and 23, Paulin and Cadigan teach the diameter slightly greater than a diameter of the top portion of the beverage container (Paulin fig. 3, Cadigan fig. 1).

Regarding claims 7 and 25, Paulin and Cadigan teach the inner surface includes a first section adjacent the bottom wall and a second section extending from the first section, first section being substantially vertical (Pauline fig. 3(34,36), Cadigan fig. 1(c7,c8, c3, c5)).

Regarding claims 8 and 26, Paulin and Cadigan teach the second section expand outwardly from the first section(Pauline fig. 3(34,36), Cadigan fig. 1(c7,c5)). 1.As to the recitation "for xxx ", this is only considered to be an intended use statement which fails to add any structure to define over Paulin or Cadigan.

Regarding claims 9 and 27, Paulin and Cadigan teach at least one retention tab extending in a generally radial fashion from the inner surface, the retention tab being axially spaced from the bottom wall(Pauline fig. 3(30), Cadigan fig. 1(c8,c3)).

Regarding claims 10, 28 and 38, Paulin and Cadigan teach at least one retention tab is configured to selectively engage a separate beverage container(Pauline fig. 3, Cadigan fig. 1).

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Regarding claims 11 and 29, Paulin and Cadigan teach a plurality of retention tab(Pauline fig. 3, Cadigan fig. 1).

Regarding claims 16, 34 and 38, Paulin and Cadigan teach the sidewall, the bottom wall and the flange body are integrally formed(Pauline fig. 3, Cadigan fig. 1).

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 6 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Paulin or Cadigan. Paulin and Cadigan teach all of the claimed limitations except for the specifically claimed diameter range of 52-55mm. However, the specifically claimed diameter is not seen to be a patentable distinction, but rather is just a matter of design choice, and it would have been obvious to one of ordinary skill in the art.

3. Claims 12 –15, 17, 30-33, 35, 37, and 40-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Paulin or Cadigan inview of Brauner et al(5,318,787)(Brauner). Paulin and Cadigan teach all of the claimed limitations except for a slot extending from the sidewall to the bottom wall such that an area below the bottom wall is accessible from an exterior of the sidewall via the slot. Brauner teaches a slot extending from the sidewall to the bottom wall such that an area below the bottom wall is accessible from an exterior of the sidewall via the slot(figs 5-6(62)). It would have been obvious to one of ordinary skill in the art to make a slot extending from the

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side wall to the bottom wall such that an area below the bottom wall is accessible from an exterior of the side wall via the slot as taught by Brauner, since Brauner teaches that this feature assists in the mounting of the container to beverage container(col. 5, lines 35+).

Regarding claims 13, 31, Brauner teaches the slot sized to allow passage of a straw(col. 5, lines 39 +).

Regarding claims 14 and 32, Brauner teaches the angular fashion slot(figs 5-6).

Regarding claims 15, 33 and 41, Brauner teaches the slot extends through the flange body(figs. 5-6).

Regarding claims 17, 42 and 35, Brauner teaches a protective film secured across the upper opening(fig. 1)

Regarding claims 37, Brauner teaches a dry food item(col. 1)

4. Claims 18 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Paulin or Cadigan in view of Harvey et al(4,054,205)(Harvey). Paulin and Cadigan teach all of the claimed limitations except for a straw associate with the sidewall. Harvey teaches a straw associate with the sidewall (fig. 4). It would have been obvious to one of ordinary skill in the art to make a straw associate with the sidewall as taught by Harvey so as to provide convenience for end user.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hao T Mai whose telephone number is (703)306-9171. The examiner can normally be reached on 8AM-7PM; MON-THU.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703)308-0756. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-3599 for regular communications and (703)305-7718 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0661.

February 12, 2001



**MILTON CANO
PRIMARY EXAMINER**

Case 1761